

**UNITED STATES DISTRICT COURT
DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA

Plaintiff

v.

Case Number 8:02cr238

USM Number 18041-047

DONALD H. ASAY

Defendant

Sheldon Krantz

Defendant's Attorney

**JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1987)**

THE DEFENDANT pleaded guilty to count XVI of the Superseding Indictment on August 15, 2005.

ACCORDINGLY, the court has adjudicated that the defendant is guilty of the following offense:

<u>Title, Section & Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number</u>
18:1341 Mail Fraud	September 17, 1997	XVI

The defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984 and *Booker/FanFan* decisions.

The Indictment and counts I through XV and XVII and XVIII of the superseding indictment are dismissed on the motion of the United States as to this defendant only.

Following the imposition of sentence, the Court advised the defendant of his right to appeal pursuant to the provisions of Fed. R. Crim. P. 32 and the provisions of 18 U.S.C. § 3742 (a) and that such Notice of Appeal must be filed with the Clerk of this Court within ten (10) days of this date.

IT IS ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant shall notify the court and United States attorney of any material change in the defendant's economic circumstances.

Date of Imposition of Sentence:
November 21, 2005

s/Joseph F. Bataillon
United States District Judge

November 30, 2005

Defendant: DONALD H. ASAY
Case Number: 8:02cr238

Page 2 of 6

ACKNOWLEDGMENT OF RECEIPT

I hereby acknowledge receipt of a copy of this judgment this ____ day of _____, _____

Signature of Defendant

RETURN

It is hereby acknowledged that the defendant was delivered on the ____ day of _____,
_____ to _____, with a certified copy of this judgment.

UNITED STATES WARDEN

By: _____

NOTE: The following certificate must also be completed if the defendant has not signed the Acknowledgment of Receipt, above.

CERTIFICATE

It is hereby certified that a copy of this judgment was served upon the defendant this ____ day of _____, _____

UNITED STATES WARDEN

By: _____

Defendant: DONALD H. ASAY
Case Number: 8:02cr238

Page 3 of 6

PROBATION

The defendant is hereby sentenced to probation for a term of **three (3) years commencing November 21, 2005.**

The defendant shall not commit another federal, state, or local crime.

The defendant shall not illegally possess a controlled substance.

For offenses committed on or after September 13, 1994:

The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two period drug tests thereafter.

The defendant shall not possess a firearm, destructive device, or any other dangerous weapon.

If this judgment imposes a fine or a restitution obligation, it shall be a condition of probation that the defendant pay any such fine or restitution in accordance with the Schedule of Payments set forth in the Criminal Monetary Penalties sheet of this judgment.

The defendant shall comply with the standard conditions that have been adopted by this court (set forth below). The defendant shall also comply with any additional conditions.

STANDARD CONDITIONS OF SUPERVISION

1. the defendant shall not leave the judicial district without the permission of the court or probation officer;
2. the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
3. the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
4. the defendant shall support his or her dependents and meet other family responsibilities;
5. the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
6. the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
7. the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
8. the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
9. the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
10. the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
11. the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
12. the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;
13. as directed by the probation officer, the defendant shall notify third parties of risks that may

Defendant: DONALD H. ASAY
Case Number: 8:02cr238

Page 4 of 6

be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant shall be subject to the search of the defendant's premises, vehicle or person, day or night, with or without a warrant, at the request of the United States Probation officer to determine the presence of alcohol and/or controlled substances, firearms or any other contraband. Any such items found may be seized by the United States Probation officer. This condition may be invoked with or without the cooperation of law enforcement officers.
2. The defendant shall cooperate with the collection of a DNA sample at the direction of the probation officer, pursuant to Public Law 108-405 (Revised DNA Collection Requirements Under the Justice for All Act of 2004), if such sample was not collected during imprisonment.
3. The defendant shall complete **120 hours** of community service as approved and directed by the United States Probation Officer. The defendant shall be responsible for providing the United States Probation Officer with written proof of the number of hours completed.
4. The defendant shall provide the United States Probation officer with access to any requested financial information.
5. The defendant shall pay the cost of prosecution in the amount of \$20,000.00. Payment should be made to the Clerk of the U.S. District Court, 111 South 18th Plaza, Suite 1152, Omaha, NE 68102-1322 or the Clerk of the U.S. District Court, P.O. Box 83468, Lincoln, NE 68501-3168.
6. The requirement of 18 U.S.C. § 3563 (a) (5) regarding drug testing, that is, testing within fifteen (15) days of release on supervised release and to two (2) periodic drug tests thereafter, is suspended until further order of the court because the presentence investigation report on the defendant and other reliable sentencing information indicates a low risk of future substance abuse by the defendant.
7. The defendant shall be allowed to travel outside the United States if it is in the normal course of his business and approved by the U.S. Probation officer.
8. The defendant shall report to the United States Probation office for the District of Utah, 160 Frank E. Moss United States Courthouse, 350 South Main Street, Salt Lake City, Utah, (801) 524-5176 within seventy-two (72) hours of being placed on probation and, thereafter, as directed by the probation officer.

Defendant: DONALD H. ASAY
Case Number: 8:02cr238

Page 5 of 6

CRIMINAL MONETARY PENALTIES

The defendant shall pay the following total criminal monetary penalties in accordance with the schedule of payments set forth in this judgment.

Total Assessment

\$100.00

Total Fine

Total Restitution

FINE

No fine was imposed.

RESTITUTION

No restitution was imposed.

COST OF PROSECUTION

The defendant shall pay for the cost of prosecution in the amount of \$20,000.00

Defendant: DONALD H. ASAY
Case Number: 8:02cr238

Page 6 of 6

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, the court orders that payment of the total criminal monetary penalties shall be due as follows:

The defendant shall pay the special assessment in the amount of \$100.00 immediately.

Following sentencing, the defendant shall make payments to satisfy the criminal monetary penalty in monthly installments of \$800.00. The first payment shall commence 30 days following sentencing, and continue until the criminal monetary penalty is paid in full. The defendant shall be responsible for providing proof of payment to the probation officer as directed.

Unless the court has expressly ordered otherwise in the special instruction above, if this judgment imposes a period of imprisonment, payment of criminal monetary penalties shall be due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court, unless otherwise directed by the court, the probation officer or the United States attorney.

All financial penalty payments are to be made to the Clerk of Court for the District of Nebraska, 111 S. 18th Plaza, Suite 1152, Omaha, NE 68102-1322.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

The defendant shall inform the probation officer of any change in his or her economic circumstances affecting the ability to make monthly installments, or increase the monthly payment amount, as ordered by the court. In the event a defendant is able to make a full or substantial payment toward the remaining criminal monetary penalty, he or she shall do so immediately.

The defendant is restrained from transferring any real or personal property, unless it is necessary to liquidate and apply the proceeds of such property as full or partial payment of the criminal monetary penalty.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) community restitution, (6) fine interest, (7) penalties, and (8) costs, including cost of prosecution and court costs.

CLERK'S OFFICE USE ONLY:

ECF DOCUMENT

I hereby attest and certify this is a printed copy of a document which was electronically filed with the United States District Court for the District of Nebraska.

Date Filed: _____

DENISE M. LUCKS, CLERK

By _____ Deputy Clerk